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Candace Havens
Director

MEMORANDUM

DATE: June 20, 2014

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
James Freas, Chief Planner, Long-Range Planning 

RE: #80-13: THE PLANNING DEPARTMENT requesting update discussions of the zoning reform project.

MEETING DATE: June 23, 2014

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor

Zoning Reform, Phase 1 is intended to address existing conflicting provisions in the Newton Zoning Ordinance, while also clarifying the regulations through the use of illustrations, tables, and new wording. A number of conflicts and new, clarifying language are shown below for the Zoning and Planning Committee's consideration.

	Issue	Old Z.O. Citations	Recommendation
1	Parking Lot Landscaping	30-19(i)(2)b)	Increase minimum square feet to 25.
2	Protecting Public Uses	30-6 (k) 2 nd paragraph	Remove as unnecessary
3	Definitions Interpretations	NA	Include in new Ordinance
4	Interpretation of District Boundaries	30-3(b)	Include in new Ordinance
5	Definition of 'Site'	NA	Include in new Ordinance
6	Definition of 'Lot'	NA	Include in new Ordinance
7	Rear Setback in Limited Manufacturing	30-15, Table 3	Set at 40 feet where abutting residential districts

Issue #1

The Zoning Ordinance requires landscaping to be provided within parking areas with 20 or more stalls and each of these islands of landscaping are required to have a minimum of 20 square feet with no single dimension less than five feet in length. These landscaped areas are most commonly designed as squares or rectangles and the area of a five by five square is 25 square feet. As a result, with the minimum five foot dimension requirement, the minimum area mathematically is actually 25 square feet, not 20. For simplicity, it seems reasonable to make the minimum area 25 square feet.

Issue #2

The following provision, located in the Public Use District in the Zoning Ordinance, does a number of things, all repetitive to other provisions. First, it says that other uses not listed as allowed in the district are prohibited unless the property is rezoned; an unnecessary statement as that idea is inherent to the construction of the overall Zoning Ordinance. Second, it permanently protects the right to have public uses on any lot where they have previously existed, even if that lot is rezoned to another, non-public use district; this part became effectively obsolete when public uses were designated as an allowed use in all districts. Lastly, the paragraph allows religious and educational purposes in the Public Use District, but these uses are already listed as allowed in all districts. Staff recommends that this paragraph may be removed entirely.

“No other use or design and arrangement of any such land, structure or building thereon or thereover except as provided above shall be permitted until the land concerned shall have been rezoned in accordance with this chapter. No such rezoning shall affect the use of such land, structure or building for any of the purposes specifically set forth in section 30-6, whether or not carried on simultaneously with such other zoned use. Nothing in this section shall prohibit the use or design and arrangement of land, structure or building in this district by religious or nonprofit educational uses pursuant to the provisions of section 30-5(a)(2).”

Issue #3

The following sections are proposed to be added to provide guidance on the interpretation of words used in the Zoning Ordinance and to clearly state that text controls over illustrations. The Law Department will review for correct reference to Massachusetts courts.

9.1.1 Common Meaning

- A. All words and terms used have their commonly accepted and ordinary meaning unless they are specifically defined in this Chapter or the context in which they are used clearly indicates to the contrary.*
- B. In the absence of court decisions or Zoning Board of Appeals decisions specifically interpreting a provision in question, specific definitions listed in this Chapter or previous interpretations of a provision by the Commissioner of Inspectional Services, the*

meaning of provisions shall be based on the following general hierarchy of sources:

- 1. For a legal term, definitions in a legal dictionary or if not a legal term, definitions in an ordinary dictionary;*
 - 2. Statements of the purpose and intent of particular sections, although such statements cannot overrule a specific code provision;*
 - 3. Minutes of discussions of legislative or advisory bodies considering adoption of the provision in question;*
 - 4. Definitions of similar terms contained in Federal and State statutes and regulations; and*
 - 5. Ordinary rules of grammar.*
- C. When vagueness or ambiguity is found to exist as to the meaning of any word or term used, any appropriate canon, maxim, principle or other technical rule of interpretations or statutory construction used by the courts of this State may be employed to resolve vagueness and ambiguity in language.*

[9.1.2. Graphics, Illustrations, Photographs & Flowcharts](#)

The graphics, illustrations, photographs and flowcharts used to explain visually certain provisions of this Chapter are for illustrative purposes only. Where there is a conflict between a graphic, illustration, photograph or flowchart and the text of this Chapter, the text of this Chapter controls.

Issue#4

In a separate section, staff is proposing to add the Director of Planning to those who sign off on the veracity of zoning map changes that result from Aldermanic decisions on rezonings. Consistent with that provision, in the section below it is proposed that the Commissioner of Inspectional Services consult with the Director of Planning and Development, as well as the City Engineer in making zoning district boundary interpretations where there is uncertainty as to the location of the line.

1.3.3. Interpretation of District Boundaries

B. Whenever any uncertainty exists as to the exact location of a boundary line, the location shall be determined by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development and the City Engineer; provided that any person affected by his decision may appeal to the Zoning Board of Appeals in the manner provided in Sec. 8.7.

Issues #5 & 6

Newton's current zoning ordinance does not define the term "lot" which, as one of the basic units of land use regulation, is a very important term. The current ordinance also lacks a definition for "site," another important term in certain regulatory situations where it must be distinguished from a "lot." Both definitions are proposed for inclusion in the reformatted zoning ordinance for the purpose of clarity. The question was raised as to how these terms were intended to be used and how they might affect other parts of the existing ordinance.

Basically, a lot is the single piece of land or property that a person owns, whether it is their intention to live there, rent the property to someone else, or develop the property. A lot is legally defined in a deed. Owning a lot does not necessarily entitle one to the right to develop that lot. A "site" is one or more lots controlled by one entity or person assembled or acquired specifically for the purpose of development. Site becomes an important term where the ordinance is clearly intending to regulate future development that might occur on one or more assembled lots such as the Open Space Preservation District. In those situations, it is important to be able to differentiate between those requirements that apply to the entire site as opposed to those applying to an individual lot within or created as a part of the development. Again, the fact that one has property that might constitute a site by the definition in no way imparts the right to develop that property.

1.5.2. Site

A. Defined. A site is any lot or group of contiguous lots owned or controlled by the same person or entity, assembled for the purpose of a single development.

1.5.3. Lot

A. Defined. A parcel of land either vacant or occupied intended as a unit for the purpose, whether

*immediate or for the future, of transfer of ownership,
or possession, or for development.*

Issue #7

As was presented in the previous meeting, there is another conflict between the setback requirements in the footnotes to Table 3 in 30-15. The rear setback on buildings in the Limited Manufacturing district, where abutting a Residential District, are either $\frac{1}{2}$ building height or 20 feet, whichever is greater according to footnote 10, or 40 feet according to footnote 6. Staff recommends 40 feet.